

THE CITY OF NEW YORK  
DEPARTMENT OF INFORMATION TECHNOLOGY  
AND TELECOMMUNICATIONS

REQUEST FOR PROPOSALS  
FOR FRANCHISES FOR THE INSTALLATION AND USE, ON CITY-OWNED  
STREET LIGHT POLES, TRAFFIC LIGHT POLES AND HIGHWAY SIGN  
SUPPORT POLES, OF TELECOMMUNICATIONS EQUIPMENT AND  
FACILITIES, INCLUDING BASE STATION AND ACCESS POINT FACILITIES,  
IN CONNECTION WITH THE PROVISION OF MOBILE  
TELECOMMUNICATIONS SERVICES

IMPORTANT:

IT IS UNLAWFUL TO ENGAGE IN ACTIVITY THAT UNDERMINES OR THWARTS A FAIR AWARD OF A FRANCHISE CONTRACT RELATED TO THIS RFP. THE NEW YORK CITY COMPTROLLER IS CHARGED WITH THE AUDIT OF CONTRACTS IN NEW YORK CITY. IF YOU BELIEVE THAT THERE HAS BEEN UNFAIRNESS, FAVORITISM OR IMPROPRIETY IN CONNECTION WITH THIS PROPOSAL PROCESS, PLEASE CONTACT THE NEW YORK CITY COMPTROLLER, OFFICE OF CONTRACT ADMINISTRATION, ONE CENTRE STREET, ROOM 835, NEW YORK, NEW YORK 10007, TELEPHONE NUMBER (212) 669-3000.

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## SECTION 1. INTRODUCTION.

(a) RFP Goals. The number of users of mobile telecommunications has grown significantly over the last five years. See *Federal Communications Commission, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Eighth Annual Report, Released July 14, 2003 (FCC 03-150)*. The scope of available services offered by mobile telecommunications has also expanded significantly, from primarily voice communications and paging services to include e-mail, data communications, color and video imaging, and Internet access. New generations of mobile telecommunications technologies (often referred to as "3<sup>rd</sup> Generation" and "4<sup>th</sup> Generation" or "3G" and "4G" technologies), are expected to make mobile services even more widely available and more versatile in use. Also recently, shorter range mobile telecommunications technologies, such as (but not limited to) those using so-called 802.11x standards, are being widely adopted. Enormous growth in the use of mobile telecommunications in recent years has already demonstrated that wireless technology can offer benefits of wide interest in both business and personal use contexts. The newest mobile technologies offer the prospect of expanding such benefits even further. In addition, the events of September 11, 2001 demonstrated how mobile communications can provide an alternative communications outlet when access to land-based communications service is unavailable or beyond reach. For all of these reasons, the New York City Department of Information Technology and Telecommunications ("DoITT") believes that it is appropriate to facilitate the availability of state-of-the-art mobile telecommunications services to residents,

businesses, public entities and visitors in New York City ("the City"). One of the ways to support the availability of robust, reliable, high-quality mobile services in the City is to make available City-owned property such as street light poles, traffic light poles and highway sign supports (collectively "lightpoles") for reception and transmission facilities that may be useful for the provision of mobile telecommunications services. At the same time, the public interest in a streetscape that is safe, not excessively cluttered in appearance, and otherwise consistent with City use of the relevant facilities and their surroundings requires that the design of mobile telecommunications facilities located on City-owned lightpoles be within parameters that are consistent with such public interest and that would result in no land use impacts. Furthermore, any commercial installations on City-owned lightpoles must be consistent with and must accommodate current and projected operational activities of City agencies using and maintaining City-owned facilities in connection with the provision and support of City services to the public and must include an appropriate compensation (i.e., rent) to the City for use of City-owned lightpoles. This RFP, which follows in many respects the approach of a previous request for proposals of similar import issued in 1996, has been structured in a manner intended to balance the public interests in facilitating access to commercial mobile telecommunications services, in appropriate design for facilities located on City-owned lightpoles, in appropriate accommodation for City agency operations and in appropriate compensation to the City for use of City-owned lightpoles. It is also noted that City-owned property, such as lightpoles, are not the only, or even the preponderant, type of location that can be used to locate mobile

telecommunications facilities and equipment. Indeed, the mobile telecommunications industry has largely developed to date using private property to locate facilities and equipment, access to which private property requires no authority under a franchise granted pursuant to this RFP. It is DoITT's view and determination, then, that while it may be in the public interest to make City-owned property such as lightpoles available for the purposes described in this RFP, any decision not to make such property available to one or more entities is not intended to prohibit or effectively prohibit any such entity from providing its services, which may be provided using private property (with respect to which no franchise is required).

(b) Procedural Background. Pursuant to Section 363 of the Charter of the City of New York (the "Charter"), the Commissioner of DoITT has made the initial determination of the need for franchises in connection with the provision of mobile telecommunications services and, pursuant to Section 363 of the Charter, the Mayor submitted to the Council of The City of New York (the "Council") a proposed authorizing resolution for such franchises. On August 11, 1999, the Council adopted such an authorizing resolution (Resolution No. 957, attached hereto as "Exhibit A", referred to hereinafter as the "Resolution") and thereby authorized DoITT to grant non-exclusive franchises for the installation of telecommunications facilities and equipment on, over and under certain property of the City in connection with the provision of mobile telecommunications. The Council determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by assuring the widespread availability of reliable mobile

telecommunications services. Charter Section 1072 grants DoITT the power to, among other things, develop and issue requests for proposals or other solicitations of proposals for telecommunications-related franchises. Pursuant to said Charter Section 1072 and the Resolution, DoITT hereby issues this Request for Proposals ("RFP") to award non-exclusive franchises for the installation of equipment and facilities, on City-owned lightpoles located in the inalienable property of the City, in connection with the provision of mobile telecommunications services in the City.

(c) Definitions. For the purposes of this RFP, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter. For the purposes of this RFP, "mobile telecommunications services" shall have the meaning set forth therefor in the Resolution.

(d) Proposals Sought. This RFP is issued to elicit proposals for franchises that would permit the placement, on City-owned street light poles, traffic light poles, and/or highway sign support poles, of small, lightweight, mobile telecommunications reception/transmission equipment such as microcell antennas, 802.11x access points, and other types of transceivers and similar and related equipment (all such forms of reception/transmission and related equipment designed to support and facilitate wireless telecommunications are hereinafter referred to as "base stations"). A franchisee will also be authorized (subject to all City Department of Transportation and other City agency and other City installation and permit requirements) to install cabling for the purpose of connecting base stations installed on City-owned lightpoles to one another or to a



supporting telecommunications system.<sup>1</sup> An entity granted a franchise pursuant to this RFP will not be required to, although it may, identify in advance (i.e. at the time of the grant of the franchise) the specific locations where it seeks to locate base stations. Rather, it is anticipated that a franchisee granted a franchise hereunder will have the opportunity to seek appropriate base station locations as the franchisee's needs arise. Any franchise agreement entered into pursuant to this RFP will include procedures for allocating locations in the event multiple franchises are granted and incompatible location requests from multiple franchisees are received by the City.<sup>2</sup> This RFP is not intended to grant any rights to any applicant against the City or its agencies with respect to any decision to negotiate or fail to negotiate a franchise agreement, or approve or fail to approve a franchise. Proposers shall note that if pursuant to the proposal evaluation process described in Section 8 hereof it is determined that one or more proposals

- (i) meet the proposal requirements set forth in this RFP, and
- (ii) propose terms that are sufficient to indicate that entering into negotiations toward a franchise agreement is likely to result in a franchise agreement that furthers the public interests described in this RFP in a manner consistent with this RFP,

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<sup>1</sup> Any franchisee installing base stations, if it needs to connect one or more base stations by cable or wire to other telecommunications facilities but does not choose to install wiring or cabling itself, may achieve the necessary connectivity for its base stations by leasing use of cable or wire from one of the City's many high-capacity broadband telecommunications franchisees.

<sup>2</sup> Allocation of sites among multiple applying franchisees, where all applications cannot be practically accommodated, will likely rely in significant part on the compensation being offered by competing applicants, and proposers may wish to consider such likelihood in developing their compensation proposals pursuant to Sections 7 and 8(b)(4) of this RFP.

then such negotiations toward a franchise agreement would be the next step. No franchise shall be effective until a franchise agreement consistent with the Resolution is successfully negotiated and approved pursuant to the applicable procedures set forth in the Charter.

## **SECTION 2. NON-EXCLUSIVITY; RESERVATION OF AUTHORITY.**

Any franchise award or awards by DoITT from among the proposals submitted pursuant to this RFP will be non-exclusive (although with respect to any specific site or location for the placement of facilities or equipment, technical, design, safety and/or City operational considerations may require that use of such particular site or location be limited). DoITT reserves, to the fullest extent permitted by law, the right to select no proposals, one proposal or multiple proposals. DoITT also reserves the right to issue additional RFPs of the same or similar effect in the future. Potential proposers shall note that the City is currently in the process of determining a strategy as to how to serve the future operational needs of City agencies for broadband wireless services, in support of public safety and other City services. It is possible that serving such City operational needs will require new installations by the City itself and that such needs may limit the degree to which it is appropriate to also permit installations on City-owned lightpoles by commercial entities as contemplated in this RFP. However, no decision by the City to limit the grant of rights to install mobile facilities as contemplated in this RFP will affect the rights of any entity to locate facilities on private property within the City of New York for the purpose of providing telecommunications services.

### SECTION 3. RFP TIMETABLE.

Release date of this RFP will be **February 9, 2004** (the "Release Date").

Proposals must be received by 5PM on the 60th day after the Release Date, that is, **April 9, 2004** (the "Submission Deadline"). Proposals must be submitted to Agostino Cangemi, Department of Information Technology and Telecommunications, 75 Park Place, 9th Floor, New York, New York 10007.

DoITT RESERVES THE RIGHT TO CANCEL OR AMEND THIS RFP AT ANYTIME. INTERESTED PARTIES ARE ADVISED TO CONTACT DOITT PRIOR TO SUBMITTING THEIR PROPOSAL TO CONFIRM THAT THIS RFP REMAINS IN EFFECT.

### SECTION 4. GENERAL INFORMATION.

(a) Status of Information. DoITT shall not be bound by any oral or written information released prior to the issuance of this RFP. PROPOSERS SHOULD NOT RELY ON ANY REPRESENTATIONS, STATEMENTS OR EXPLANATIONS OTHER THAN THOSE MADE IN THIS RFP OR IN A FORMAL ADDENDUM TO THIS RFP.

(b) Proposer Inquiries. All inquiries regarding this solicitation must be in writing, addressed to the Agency Contact Person designated on the cover sheet of this RFP, or such person's successor.

(c) Communication with DoITT. Proposers are advised that, from the day their proposal has been submitted until DoITT has decided to grant or deny an award (the "Evaluation Period"), all contact with DoITT personnel related to this RFP must be written and is limited to the Agency Contact Person designated on the cover sheet of this RFP, or such person's successor, and persons designated by the Agency Contact Person.

(d) Addenda. DoITT will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda. PROPOSERS SHOULD NOT RELY ON ANY REPRESENTATIONS, STATEMENTS OR EXPLANATIONS OTHER THAN THOSE MADE IN THIS RFP OR IN A FORMAL ADDENDUM.

(e) Pre-Proposal Conference. A pre-proposal conference will be held on February 24, 2004, at 11:00AM at 75 Park Place, New York, New York 10007. The conference will be conducted by DoITT personnel to assist proposers in understanding the RFP and franchising requirements. Nothing stated at the conference shall change this RFP unless the change is made in writing by the Agency Contact Person designated on the cover sheet of this RFP. A written summary of the conference, including the names and affiliations of all attendees, shall be maintained by DoITT in its agency contract file. Attendance at the pre-proposal conference is not mandatory but those considering submitting a response are encouraged to attend. Those interested in attending the pre-proposal conference are requested to inform the Agency Contact Person designated on the cover sheet of this RFP of the number of persons expected to attend the conference not later than twenty-four (24) hours before the scheduled

conference date. Those planning to attend and expecting to ask questions are encouraged to submit such questions in writing in advance.

(f) Modified Proposals; Late Proposals and Modifications. Proposers may submit modified proposals to replace all or any portion of a previously submitted proposal up until the Submission Deadline. The Evaluation Committee (see Section 8(a) hereof) will only consider the latest version of the proposal submitted by the Submission Deadline. Proposals or modifications received after the Submission Deadline shall be deemed late and shall not be considered.

(g) Costs Incurred by Proposers. DoITT shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therewith.

(h) Oral Presentation; Interviews; Additional Information. DoITT may require proposers to give oral or visual presentations in support of their proposals, or to exhibit or otherwise demonstrate the information contained therein. DoITT reserves the right to require the submission of additional information from any proposer during the Evaluation Period.

(i) VENDEX. Proposers acknowledge that any selection of a proposal by DoITT will be subject to completion and submission of questionnaires in connection with the City's Vendor Information Exchange System ("VENDEX"), review of the information contained therein by the City's Department of Investigation, and completion of such process in a manner satisfactory to DoITT. DoITT reserves the right to reject any entity for a franchise if VENDEX produces information which DoITT determines, in its discretion, makes it inappropriate for

the City to grant to such entity the right to install or use equipment on City-owned lightpoles.

(j) RFP Postponement or Cancellation. DoITT reserves the right to postpone or cancel this RFP and to reject all proposals at any time.

(k) Confidential or Proprietary Information. It is not expected that information supplied by a proposer in its proposal will be confidential. In the event a proposer believes that specific information it must submit to respond fully and completely to this RFP should be treated confidentially by DoITT, it should so advise DoITT in writing. DoITT will attempt to treat as confidential proprietary information of any proposer, consistent with legal requirements. Any allegedly proprietary information contained in a proposal must be clearly designated as such, and should be separately bound and labeled with the words "Proprietary Information". Appropriate reference to this separately bound information must be made in the body of the proposal. MARKING THE ENTIRE PROPOSAL AS PROPRIETARY WILL RESULT IN THE PROPOSAL BEING RETURNED TO THE PROPOSER UNREAD. Proposers should be aware, however, that DoITT may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 87 *et seq.*), to disclose a written proposal or portion thereof submitted in connection with this RFP. In the event that such disclosure is requested by a third party, DoITT will provide notice to the proposer as far in advance as practicable of any deadline for responding and shall consult with the proposer to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL. Consistent with the requirements of FOIL, the final determination whether such information may

be withheld from disclosure shall be made by DoITT. In the event that DoITT determines that information may not be withheld, DoITT will attempt to provide the proposer with timely notice of intent to disclose in order that the proposer may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law. The proposer expressly acknowledges and agrees that neither DoITT nor the City of New York will have any liability to the proposer in the event of disclosure of materials designated by the proposer as "Proprietary Information".

#### **SECTION 5. DESIGN AND TECHNICAL REQUIREMENTS FOR BASE STATION EQUIPMENT LOCATED ON LIGHT POLES.**

##### **(a) Permitted Components and Size of Base Station Equipment.**

Proposals for location of base stations and related facilities on street light poles (SLPs), traffic light poles (TLPs) or highway sign supports (HSSPs) shall include at least a schematic design for, and a photograph of, the equipment intended to be installed. The fullest possible design description and photographic description of the proposed installations are encouraged. Proposals may contemplate the installation of one, two or all three of the following elements to be installed on SLPs/TLPs/HSSPs, provided such elements to be installed are consistent with the following parameters:

(1) One equipment housing (which may enclose, incorporate or consist of one or more than one antenna of any type, or other form of equipment) within either of the two following size parameters:

(A) An equipment housing with a volume no greater than 2.8 cubic feet (i.e., 4,840 cubic inches). Equipment housings that are of a volume no greater than 2.8 cubic feet, but that are not "sub-sized housings" under subsection (B) below are referred to in this RFP as "standard housings". Standard housings shall have a maximum width (i.e., a maximum horizontal dimension, perpendicular to the pole and parallel to the ground) of eighteen inches unless a substantial operational need for a larger width is demonstrated to the satisfaction of DoITT and the City's Department of City Planning ("DCP").

(B) An equipment housing with maximum dimensions of 13 inches by 9 inches by 4 inches (that is, no more than thirteen inches in its longest dimension, nine inches in its second longest dimension and four inches in its shortest dimension). Equipment housings complying with this subsection (B) are referred to in this RFP as "sub-sized housings".

Equipment housings installed pursuant to this RFP shall be sub-sized housings unless an operational need for a standard housing is demonstrated to DoITT's satisfaction.

(2) Up to two stick-type antennas, each no more than two inches in diameter and extending no more than thirty-six inches in length, extending vertically (either up or down) from a base either at the top of the pole or on the related equipment housing; provided that where such equipment is installed on "bishop's crook" design SLPs and located within the "limit



zone\* defined in Section 5(c)(3) of this RFP below, such antennas must be attached to the equipment housing and not extend more than one foot above the limit zone or the widest part of the flared decorative element directly above the limit zone, whichever is shorter, or the start of the flared decorative element below the limit zone, unless an exemption to these height restrictions has been made by DCP and DoITT upon the determination that the antenna designs are inconspicuous.

(3) Wire or cable interconnecting the above elements with each other and with underground power and/or other supporting utility facilities (in areas where such utility facilities are located above ground, then such wire interconnection shall be permitted to connect to such above ground facilities), with as much of such wire or cable being located inside the SLP/TLP/HSSP; rather than externally, as practicable.

(b) Permitted Weight of Base Station Equipment. All equipment to be installed on a pole must be of a weight no greater than that compatible with the capacity of the pole to safely and securely support such equipment. Calculation of such compatible weights shall as appropriate take into account snow loads or other reasonably predictable weight burdens to which equipment may be subject in the field.

(c) Permitted Location and Orientation on Pole of Base Station Equipment.

(1) Unless otherwise specifically permitted by the City, all equipment on any SLP/TLP/HSSP will be located on the vertical portion of the pole (that is, unless otherwise permitted by the City, no equipment will

be located on any "arm" or horizontal portion of the SLP/TLP/HSSP) and equipment housings shall be oriented so that the largest dimension is the height. Notwithstanding the preceding sentence, however, sub-sized housings and equipment related thereto may be located at the top of the curved arm of an SLP with a cobra-head fixture (immediately adjacent to the luminaire itself) or at the junction of the curved arm and the vertical portion of the pole (if, pursuant to this sentence, housings are located on a horizontal "arm", such housings shall be oriented so that their largest dimension is also horizontal).

(2) On TLPs with signal "arms", housings shall be located in the "arm zone", the "arm zone" being defined as the portion of the pole above the curved arm and below the short cross bar carrying the tension rods supporting the "arm". On TLPs without signal "arms", and on SLPs, housings shall be located, except as expressly permitted by the City, not lower than fifteen feet above curb level (except that sub-sized housings may be located as described in the final sentence of the preceding subsection (1) even if such location would be inconsistent with such height requirement).

(3) Notwithstanding anything to the contrary in this subsection (c), any facilities located on "bishop's crook" design SLPs shall be installed only within the "limit zone", defined as a four foot zone of minimal or no decoration generally located on such poles from about fifteen feet above street level to about nineteen feet above street level.

(d) Permitted Visual Appearance of Base Station Equipment.

(1) Each equipment housing must be painted the same color as the pole on which it is sited.

(2) No writing, symbol, logo or other graphic representation that is visible from the street or sidewalk shall appear on any exterior surface of an equipment housing.

(e) Review Requirements for Design and Installation of Base Station Equipment. Installation of equipment on poles shall be subject to the City's right to review and approve the final design and appearance of all equipment to

(1) ensure compliance with all applicable laws, rules and regulations of the City (including to the extent applicable and without limitation Landmarks Commission and Art Commission requirements),

(2) ensure public safety, the integrity of City facilities and non-interference with pedestrians and vehicular traffic, and

(3) ensure esthetic consistency with the poles to which the equipment will be attached (including signage and other items or matter that may be located on such poles) and the surrounding context.

Potential proposers should note that in some areas of the City (such as historic districts, business improvement districts or other types of areas) specially designed poles have been or may be installed in some locations. Franchisees seeking to install equipment on such specially designed poles may be required to modify otherwise permitted equipment designs for consistency with special pole designs.

(f) Power Supply. Each franchisee will be responsible for obtaining and paying for electrical power for its equipment.

(g) Radio Frequency Energy Exposure Limits. Proposals shall include documentation showing that the radio frequency energy exposure from equipment proposed to be installed will be below the maximum permitted levels established by the Federal Communications Commission (FCC). Franchise contracts issued pursuant to this RFP will require on-going compliance with such FCC maximum permitted levels (calculated on an aggregate basis with any other radio frequency energy emitters that may be present), and permit the City to require testing, from time to time, by independent experts, at the expense of franchisees, to ensure such compliance.

(h) City Pole Management Requirements. Any facility located on any City pole will be subject to the City's operational needs with respect to such pole. Thus, for example, if the City determines that any pole is no longer necessary or appropriate at its location then a franchisee with facilities on such pole will be required to remove such facilities or risk removal by the City at the franchisee's expense, and if the City determines that it is appropriate to move or remove any pole temporarily to accommodate City or public activities (for example a parade such as the annual Macy's Thanksgiving Day parade), then a franchisee will be required to cooperate, at franchisee's expense, with such temporary move or removal. As a further example, if the City reasonably determines that due to installation of a facility or facilities being installed in furtherance of City operations it is no longer appropriate to maintain a facility or facilities installed pursuant to this RFP, then the franchisee with such facility or facilities will be required to remove such facility or facilities or risk removal by the City at the franchisee's expense. All installations pursuant to this RFP shall be performed in a manner

consistent with the requirements of the City's Department of Transportation implementing its authority to protect the integrity, operability, reliability and appearance of SLPs, TLPs and HSSPs and to manage vehicular and pedestrian traffic.

**SECTION 6. LOCATION AND NUMBER OF BASE STATIONS TO BE PLACED ON LIGHT POLES.**

**(a) Location Requirements.**

(1) No more than one base station permitted pursuant to this RFP will be permitted on any single pole.

(2) Base stations permitted pursuant to this RFP will only be permitted on SLPs if such SLPs are located at intersections, except that such base stations may be placed on SLPs at other than intersections upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such siting at non-intersection locations (in the event of such approved location at non-intersection sites, only sub-sized housings will be placed at such non-intersection sites unless there is a further demonstration to the satisfaction of DoITT and DCP that there is an operational need for standard housings at such sites).

(3) Base stations permitted pursuant to this RFP will be permitted on SLP sites at any intersection only up to the number which leaves two SLP sites at each intersection without such base stations, and thus available for future designation, except that such base stations may be permitted pursuant to this RFP at locations which reduce below two the

number of SLPs at an intersection left without such base stations upon a demonstration, to the satisfaction of DoITT and DCP, that there is an operational need for such siting.

(4) Due to City operational needs, TLPs on which a traffic signal controller box is located (usually one pole per intersection with a traffic light) are not being made available for use pursuant to this RFP.

(5) Base stations permitted pursuant to this RFP will only be permitted on TLPs that support a signal "arm" reaching into the roadbed, except that if at an intersection there are no TLPs with such a signal arm, then up to two TLPs without signal arms may be used for base stations at such intersection.

(6) Any franchise agreement granted pursuant to this RFP will require that base stations sited pursuant to the franchise be placed, located and operated so as not to interfere with the operation of base stations of other franchisees or with public safety operations or other City operations. Proposers are encouraged to include in their responses to this RFP proposed approaches to assuring such non-interference.<sup>3</sup>

(b) Maximum Number of Poles Available. Each franchisee will be limited to using a maximum number of 3,000 poles unless and until the City determines that such maximum should be increased.

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<sup>3</sup> Proposers should note in particular, but without limiting the general application of this subsection (6), that the City currently anticipates using a wireless transmission system based on utilization of the 4.9 GHz frequency band for certain City operations and that all facilities installed pursuant to a franchise granted pursuant hereto will be required to operate in a manner which will not interfere with such City use.

## SECTION 7. FRANCHISE COMPENSATION

(a) Per Pole Compensation. It is anticipated that compensation to the City for the placement of base stations on SLPs/TLPs/HSSPs will be at least comparable to that paid by mobile telecommunications providers for placement of base stations on private property, in light of the fact that by making available its pole sites for this purpose, the City is making available certain of its proprietary facilities for use in a manner comparable to that for which private property sites are used. Each proposer is encouraged to describe, in the compensation section of its proposal, the extent to which its compensation proposal is consistent with compensation generally paid in the industry to locate base stations on private property in comparable areas, and if the proposed compensation is not fully consistent with such compensation for private sites, explaining in detail why it is not thus consistent. Compensation proposals may propose different levels of compensation for sites within different areas of the City if such would reflect differences in compensation paid in the industry to locate base stations on private property in such different areas of the City and/or if such would otherwise serve the public interest.<sup>4</sup> As noted in Section 8(c)(4) of this RFP, proposals will be evaluated not just on the monetary compensation offered to the City but also the value of any telecommunications facilities and services offered by the proposer to the City.

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<sup>4</sup> As an example, real property values are currently higher in midtown Manhattan than in many other areas of the City, and therefore DoITT assumes that, absent contravening factors described by proposers in their proposals, proposed compensation for sites in that area will be higher than for sites in many other areas.

(b) Minimum Compensation. Availability of pole locations for the purposes described in this RFP is a limited resource that as a practical matter cannot be offered on an unlimited basis to all potential users. It is thus important, for the City to be able to appropriately manage the use of its poles, that its franchises for such use be granted to entities that are prepared to use the franchise resource in a significant way and not merely hold the franchise resource without making significant use of it, to the possible detriment of others who might make more efficient use of such resource. An effective way of assuring that only those who will make significant use of the franchise resource seek and maintain a franchise is to require a minimum level of franchise compensation regardless of the number of poles the franchisee actually uses. The City anticipates that any franchise granted pursuant to such RFP will include such a minimum franchise compensation obligation, and proposers are instructed to include in their proposals a proposed minimum franchise compensation amount that the proposer would be prepared to pay if granted a franchise pursuant to this RFP.

(c) Security Fund. Potential proposers shall note that any franchise issued pursuant to this RFP shall include provision for payment by the franchisee into a security fund, to be held by the City, sufficient to secure the City against abandonment of facilities on City property and damage to City property and to secure franchise compliance generally, including (without limitation) payment by the franchisee of compensation obligations. It is currently anticipated that the security against abandonment component of such security



will be at least several hundred dollars per pole, and may be greater depending on the nature and design of particular proposed installations.

#### SECTION 8. PROPOSAL EVALUATION PROCEDURES.

(a) Evaluation Committee. Proposals will be reviewed by an Evaluation Committee consisting of not fewer than three (3) people with knowledge, expertise and experience sufficient to make a fair and reasonable evaluation of the proposals. Written evaluation forms (which may be in the form of rating sheets or other form of evaluation) shall be used to evaluate proposals and shall be signed and dated by all members of the Evaluation Committee. Initial evaluations may be amended, and the amended evaluations shall be recorded on amended evaluation forms. Copies of all initial and amended evaluation forms shall be maintained as part of DoITT's files.

(b) Proposal Package. At a minimum, a proposal submitted in response to this RFP must be comprised of the following:

(1) Technical Proposal – A narrative and/or other appropriate form of presentation which describes: (i) the equipment and facilities which would be located on SLPs/TLPs/HSSPs, including at least a schematic design for, and a photograph of, the equipment intended to be installed (the fullest possible design description and photographic description of the proposed installations are encouraged); (ii) the services to be provided by such equipment and facilities, including the extent to which such equipment and facilities will be capable of serving multiple telecommunications service providers; (iii) the proposer's method(s) of

installation of such facilities and equipment (including, to the extent not already included in the materials required by clause (i), a description of the mounting procedures and techniques to be used to attach the facilities and equipment to the poles) and a description of any connecting facilities proposed to be used as described in the second sentence of subsection (d), of Section 1 of this RFP ; (iv) the proposer's plans for repair, maintenance, and/or removal of such facilities and equipment; (v) the proposer's plans for maintaining the City's property in good condition during the term of the franchise; and (vi) the time period during which the proposer anticipates installing the franchise facilities and, to the extent the proposer's system generally is not yet operational in the City, an anticipated time line for such system to become operational in the City. Maps, drawings, illustrations, charts or other graphic descriptions may be included in this portion of the proposal, are in fact encouraged, and in the case of the photographic and schematic design submission mandated by Section 5(a) of this RFP, required.

(2) Legal and Managerial Proposal – A narrative which (i) indicates the extent to which the proposer has secured any necessary authorizations, approvals, licenses and/or permits required to undertake the activities proposed and an acknowledgment that the proposer will not undertake such activities unless and until such authorizations, approvals, licenses and/or permits are obtained (for any system and/or equipment that requires FCC licensing, the proposer must confirm in its proposal that such system and/or equipment is, or will be prior to installation, fully

licensed by the FCC<sup>5</sup>; (ii) describes the managerial experience and capabilities of the proposer; and (iii) describes whether the facilities proposer proposes to install on City poles will be serving one or multiple telecommunications service providers. Such narrative may be in a format of the proposer's choice and may include: business references, a list of services provided by the proposer, an organization chart or outline identifying the names and titles of senior management that is or will be responsible for operating the proposer's system, and any other information the proposer deems relevant.

(3) Financial Capacity Proposal - A narrative which describes the proposer's financial ability to undertake the activities proposed and properly maintain affected City property. Such narrative may include any financial information the proposer deems relevant.

(4) Compensation Proposal - A description of the compensation the proposer is prepared to offer for the use of the City's property, consistent with Section 7 above of this RFP, including both a per pole compensation element and a minimum compensation element.

(5) Release Date of RFP and Acknowledgement of Addenda; Affirmation - (i) A form, which when completed and submitted with the proposal package, serves to confirm the release date of the RFP to which the proposer is responding and as the proposer's acknowledgement of the

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<sup>5</sup> Franchise contracts issued pursuant to this RFP will require that such FCC licensing be maintained at all times during which applicable equipment remains installed on City property, such licensing requirement to include, without limitation, that any required site-specific FCC license be obtained prior to and maintained throughout the period of installation and that all installed equipment be FCC Type Accepted to the extent required under federal law or regulation.

receipt of addenda to this RFP which may have been issued prior to the submission of the proposal. (See Exhibit B attached hereto). (ii) The form of affirmation attached hereto as Exhibit C, signed by the proposer, which affirmation will also be included in any franchise agreement entered into pursuant to this RFP.

(c) Proposal Evaluation Criteria. The criteria to be used by the Evaluation Committee in evaluating each proposal shall be:

- (1) the financial, legal, technical and managerial experience and capabilities of the proposer;
- (2) the ability of the proposer to maintain the property of the City in good condition throughout the term of the franchise;
- (3) the adequacy, amount and value of the proposed compensation to be paid to the City;
- (4) the value of any telecommunications facilities and services offered to the City by the proposer;
- (5) the value, efficiency and scope of the public service to be provided (including, without limitation, the degree to which the proposal if accepted would improve and/or expand service to underserved areas of the City); and
- (6) the extent to which the facilities proposed to be installed will serve multiple mobile telecommunications service providers.

(d) Proposal Submission Requirements. Proposers are required to submit one (1) signed original and five (5) copies of each proposal package. There is no page limitation for proposals, although conciseness is encouraged.

#### **SECTION 9. SPECIAL INSTRUCTIONS.**

During the period between the release date of this RFP and the end of the Evaluation Period proposers who wish to communicate with DoITT regarding this RFP are required to communicate, in writing, exclusively with the Agency Contact Person listed on the cover sheet of this RFP (or such person's successor), except as otherwise specifically directed by the Agency Contact Person. In the event DoITT requires clarification of any portion of a proposal, it is possible that DoITT staff, other than the Agency Contact Person, may contact the proposer with a request for information. Proposers are asked to promptly respond to such requests in writing. Under no circumstances will a modification of the requirements of this RFP by DoITT be made formally other than in an addendum. No proposer's request for information will be considered formal unless made in writing to the Agency Contact Person. Proposers may if they wish request that written communications from DoITT be sent by e-mail, in lieu of hard copy, to an e-mail address specified by the proposer (a form for such request is attached hereto as Exhibit D).

#### **SECTION 10. STANDARD TELECOMMUNICATIONS FRANCHISE RFP LANGUAGE.**

Notwithstanding anything to the contrary in this RFP, no entity that submits a proposal in response to this RFP shall be refused a franchise of the type described in this RFP for a reason, or on a basis, which the City is preempted

from using as a reason or basis for refusing the grant of such a franchise pursuant to federal law. The inclusion of this paragraph in any RFP soliciting franchise proposals is not intended to represent any concession or agreement by DoITT or the City that any particular federal law is applicable to the RFP generally, to the type of franchise that is the subject of the RFP or to any specific provision of such RFP.

REQUEST FOR PROPOSALS FOR FRANCHISES FOR THE INSTALLATION AND USE ON CITY-OWNED STREET LIGHT POLES,  
TRAFFIC LIGHT POLES AND HIGHWAY SIGN SUPPORT POLES, OF TELECOMMUNICATIONS EQUIPMENT AND FACILITIES,  
INCLUDING BASE STATION AND ACCESS POINT FACILITIES, IN CONNECTION WITH THE PROVISION OF MOBILE  
TELECOMMUNICATIONS SERVICES

**EXHIBIT A:**

**NEW YORK CITY COUNCIL RESOLUTION NUMBER 957,  
ADOPTED AUGUST 11, 1999**

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THE COUNCIL OF THE CITY OF NEW YORK  
RESOLUTION NO. 957

**..Title**

Proposed authorizing resolution submitted by the Mayor pursuant to Section 363 of the Charter for the granting of franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City in connection with the provision of mobile telecommunications services.

**..Body**

By Council Members Eisland and McCaffrey (at the request of the Mayor)

WHEREAS, by Executive Order 25, dated August 23, 1995, the Mayor has designated the Department of Information Technology and Telecommunications as the responsible agency for granting of telecommunications franchises; and

WHEREAS, pursuant to Section 363 of the Charter (the "Charter") of the City of New York (the "City"), the Commissioner of the Department of Information Technology and Telecommunications has made the initial determination of the need for franchises for mobile telecommunications services in the City of New York; and

WHEREAS, pursuant to Section 1072 of the Charter, the Department of Information Technology and Telecommunications has proposed an authorizing resolution for the granting of franchises for mobile telecommunications services; and

WHEREAS, the City Council has determined that the granting of such franchises will promote the public interest, enhance the health, welfare and safety of the public and stimulate commerce by assuring the widespread availability of reliable mobile telecommunications services;

The Council hereby resolves that:

The Council authorizes the Department of Information Technology and Telecommunications, or any successor thereto, to grant non-exclusive franchises for the installation of telecommunications equipment and facilities on, over and under the inalienable property of the City, in connection with the provision of mobile telecommunications services in the City of New York.

For purposes of this resolution, "inalienable property of the City" shall mean the property designated as inalienable in Section 383 of the Charter.

For purposes of this resolution, "mobile telecommunications services" shall mean "mobile services" as defined in the Telecommunications Policy Act of 1996 (codified at 47 U.S.C. 153) and other voice and/or data telecommunications

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services employing electromagnetic waves propagated through the atmosphere to serve portable sending and/or receiving equipment.  
Only persons licensed by the Federal Communications Commission to provide mobile telecommunications services may be granted franchises pursuant to this resolution to the extent such licenses are required by Federal law.

The public service to be provided under such franchises shall be mobile telecommunications service.

All franchises granted pursuant to this resolution shall require the approval of the Franchise and Concession Review Committee and the separate and additional approval of the Mayor.

The authorization to grant franchises pursuant to this resolution shall expire on the fifth anniversary of the date on which this resolution is adopted by the Council (the "Expiration Date"). No franchise shall be granted pursuant to this resolution by the Department of Information Technology and Telecommunications, nor approved by the Franchise and Concession Review Committee, or the Mayor after the Expiration Date.

Prior to the grant of any such franchise, a request for proposals ("RFP") or other solicitation shall be issued by the Department of Information Technology and Telecommunications. Prior to issuing any such RFP or other solicitation, all necessary environmental and land use review shall be conducted in accordance with City Environmental Quality Review ("CEQR") and Section 197c of the Charter. The criteria to be used by the Department of Information Technology and Telecommunications to evaluate responses to such RFP's or other solicitation shall include, but not be limited to, the following:

- (1) the adequacy of the compensation to be paid to the City;
- (2) the financial, legal, technical and managerial experience and capabilities of the applicant(s);
- (3) the ability of the applicant(s) to maintain the property of the City in good condition throughout the term of the franchise;
- (4) the value and efficiency of the public service to be provided; and
- (5) the value of any telecommunications facilities and services offered by the applicant(s) to the City.

The Department of Information Technology and Telecommunications shall apply the City's McBride Principles and Local Law 33 of 1997 when granting a franchise pursuant to this resolution.

Any franchise granted pursuant to this authorizing resolution shall be by written agreement which shall include, but not be limited to, the following terms and conditions:

- (1) the term of the franchise, including options to renew if any, shall not exceed fifteen (15) years;
- (2) the compensation to be paid to the City shall be adequate and shall



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include the payment of fees or the provision of facilities and services, or both. Such compensation shall not be considered in any manner to be in the nature of a tax, but such payment shall be made in addition to any and all taxes of whatsoever kind or description which are now or may at any time hereafter be required to be paid pursuant to any local law of the City, law of the State of New York, or law of the federal government;

(3) the franchise may be terminated or canceled, by the Department of Information Technology and Telecommunications in the event of the franchisee's failure to comply with the material terms and conditions of the agreement;

(4) a security fund shall be established to ensure the performance of the franchisee's obligations under the agreement;

(5) the City shall have the right to inspect the facilities of the franchisee and to order the relocation of such facilities at the direction of the Department of Information Technology and Telecommunications;

(6) there shall be adequate insurance and indemnification requirements to protect the interests of the public and the City;

(7) all franchisees shall be required to maintain complete and accurate books of account and records to the extent applicable to franchise compliance, which shall be made available on demand to the City for inspection at a location to be determined by the City in its sole discretion;

(8) there shall be provisions to ensure quality workmanship and construction methods;

(9) there shall be provisions containing the agreements required pursuant to paragraph 6 of subdivision (h) of Section 363 of the Charter relating to collective bargaining and other matters;

(10) there shall be provisions requiring the franchisee to comply with City laws, regulations and policies related to, but not limited to, employment, purchasing and investigations;

(11) there shall be provisions to ensure adequate oversight and regulation of the franchisee by the City;

(12) there shall be provisions to restrict the assignment or other transfer of the franchise without the prior written consent of the City and provisions to restrict changes in control of the franchisee without the prior written consent of the City;

(13) there shall be remedies to protect the City's interest in the event of the franchisee's failure to comply with the terms and conditions of the agreement;

(14) all franchisees shall submit to the City's Vendor Information Exchange System ("VENDEX") and the Integrated Comprehensive Contract Information System ("ICCIS");

(15) all franchisees shall obtain all necessary licenses and permits from and comply with all Regulations and Rules of the New York State Public Service

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Commission, the Federal Communications Commission and any other governmental body having jurisdiction over the franchisee;

(16) there shall be provisions preserving the right of the City to perform public works or public improvements in and around those areas subject to the franchise;

(17) there shall be provisions requiring the franchisee to protect the property of the City and the delivery of public services from damage or interruption of operation resulting from the construction, operation, maintenance repair or removal of improvements related to the franchise;

(18) there shall be provisions designed to minimize the extent to which the public use of the streets of the City are disrupted in connection with the construction of improvements relating to the franchise; and

(19) there shall be provisions to protect the interest of the City in the event of (A) a subsequent finding by a regulatory body or court of competent jurisdiction that the agreement, or any portion thereof, is invalid and/or unenforceable, and (B) any change in applicable law.

The Department of Information Technology and Telecommunications shall file with the Council the following documents:

(1) within fifteen days of issuance, a copy of each RFP or other solicitation issued pursuant to this resolution;

(2) within fifteen days of approval by the Mayor, a copy of the agreement for each franchise granted pursuant to this resolution and any subsequent modification thereof; and

(3) on or before July 1 of each year, a report detailing the revenues received by the City from each franchise granted pursuant to this resolution during the preceding calendar year.

Adopted.

Office of the City Clerk, }  
The City of New York, }

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on August 11, 1999, on file in this office.

.....  
City Clerk, Clerk of Council

REQUEST FOR PROPOSALS FOR FRANCHISES FOR THE INSTALLATION AND USE ON CITY-OWNED STREET  
LIGHT POLES, TRAFFIC LIGHT POLES AND HIGHWAY SIGN SUPPORT POLES, OF TELECOMMUNICATIONS  
EQUIPMENT AND FACILITIES, INCLUDING BASE STATION AND ACCESS POINT FACILITIES, IN CONNECTION  
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## EXHIBIT B

### ACKNOWLEDGMENT OF RELEASE DATE AND ADDENDUM

APPLICANT'S NAME:

\_\_\_\_\_

RFP RELEASE DATE:

\_\_\_\_\_

NUMBER OF ADDENDA RECEIVED:

\_\_\_\_\_

ISSUE DATE(S) OF ADDENDA:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

REQUEST FOR PROPOSALS FOR FRANCHISES FOR THE INSTALLATION AND USE ON CITY-OWNED STREET  
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## EXHIBIT C

### AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract, or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except \_\_\_\_\_

Full name of Proposer or Bidder \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

#### CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

- ☐ A - Individual or Sole Proprietorship\*  
SOCIAL SECURITY NUMBER \_\_\_\_\_
- ☐ B - Partnership, Joint Venture, or other unincorporated organization  
EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_
- ☐ C - Corporation  
EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_

By \_\_\_\_\_

Signature

Title

If a corporation, place seal here:

Much be signed by an officer or duly authorized representative.

\* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers, or vendors to ensure their compliance with

## EXHIBIT D

### E-MAIL AUTHORIZATION FORM

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The RFP document and subsequent addenda can be accessed by logging onto the following web addresses:

<http://www.nyc.gov/html/doitt/html/poletoprfp.html>

OR

DoITT's homepage: <http://www.nyc.gov/html/doitt/home.html>

Unless otherwise specifically requested in writing via mail, e-mail, or fax to the Agency Contact Person, DoITT will notify companies of updates such as addenda to the RFP via e-mail. If DoITT does not have a company's e-mail address, they must provide an e-mail address to the Agency Contact Person if they wish to continue receiving direct notification of updates. Otherwise, they may find any updates on the above websites.

If you wish to receive this RFP or addenda by hard copy mail, please provide the following information to the Agency Contact Person listed on the front of this RFP as soon as possible via mail, e-mail, or fax. Hard copies of the RFP will only be mailed. Subsequent addenda will either be mailed or faxed.

Contact Person's  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address  
(street, city, state,  
zipcode): \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Information Requested  
by Hard Copy  
(RFP, Addenda, both): \_\_\_\_\_